IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELALTE JURISDICTION
CRIMINAL WRIT PETITION NO. 151 OF 2005

Mr. Vivek Nabar ...Petitioner.

V/s

1. Mr. Vivek Apte and Ors. ...Respondents.

Mr. Girish S. Godbole for the petitioner.
Mr. U.V. Nikam, APP for the State.

CORAM: V.M. KANADE, J.
DATE : 4th August, 2006

P.C.:

1. Heard the learned Counsel for the petitioner.

2. Petitioner is challenging the order passed by the J.M.F.C. Whereby the process which was issued against the respondents - accused was recalled. Against the said order, petitioner preferred Revision Application in the Court of Sessions, Pune. The Sessions Court also confirmed the order passed by the Magistrate.

3. Brief facts are that the petitioner filed complaint under section 499 read with section 500 of the Indian Penal Code against respondents - accused on the ground that they had defamed him by filing complaint before the Vice Chancellor. It is alleged that this complaint was defamatory and, therefore, the provisions of section 500 were attracted. The

complaint was filed on 04/12/1997. The petitioner filed a private complaint in Court in the year 2001. After the process was issued on the said complaint, the respondents - accused filed application before the Magistrate for recalling the process inter alia on the ground that there was a delay in filing the complaint. The learned Magistrate, after going through the complaint and the averments made therein, recalled the process which he has issued earlier and discharged the accused. Against this order, petitioner preferred Revision Application which also was dismissed.

4. It is submitted by the learned Counsel appearing on behalf of the petitioner that the question of limitation is a mixed question of facts and law and, therefore, both the Courts below erred in deciding the question of limitation without giving any opportunity to the petitioner to lead evidence. It is submitted that, in the interest of justice, both the Courts ought to have permitted the petitioner to file an application for condonation of delay. It is, thereafter, submitted that the respondents - accused has continued to defame the petitioner and, therefore, the said offence is a continuing offence and that, on that ground, the complaint was not barred by limitation.

5. It is not possible to accept the submissions made by the learned Counsel appearing on behalf of the petitioner. Both the Courts below, after having gone through the complaint and after having scrutinized the averments made by the

petitioner, have come to the conclusion that there was a delay in filing the complaint. The Sessions Court has further observed that in the event the petitioner felt that he was defamed, in the year 2001 a fresh cause of action had accrued to him and he was at liberty to file fresh complaint on the basis of the fresh cause of action which had arisen. I do not see any illegality or infirmity in the orders passed by both the Courts below. There is no reason to interfere with the said orders. Petition is accordingly dismissed.

(V.M. KANADE, J.)